

RESOLUTION NO. 2013 – 10

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY
TO THE COMMUNITY DEVELOPMENT COMMISSION AS
THE NATIONAL CITY REDEVELOPMENT AGENCY APPROVING
THE SUCCESSOR AGENCY'S PROPOSED APPROVAL OF AN
"ASSIGNMENT AND ASSUMPTION OF AGREEMENT FOR LEGAL SERVICES"
WITH THE LAW OFFICES OF EDWARD Z. KOTKIN
RELATED TO THE "AGREEMENT FOR LEGAL SERVICES BY AND BETWEEN THE
SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT COMMISSION AS THE
NATIONAL CITY REDEVELOPMENT AGENCY AND CUMMINS & WHITE, LLP",
DATED JUNE 19, 2012 AND APPROVED BY RESOLUTION 2012-10

WHEREAS, On June 19, 2012, the Successor Agency to the Community Development Commission as the National City Redevelopment Agency ("Successor Agency") and the law firm of Cummins & White, LLP, entered into that certain "Agreement for Legal Services By and Between the Successor Agency to the Community Development Commission as the National City Redevelopment Agency and Cummins & White, LLP" ("Agreement"); and

WHEREAS, under the Agreement, Cummins & White, LLP provided professional services as legal counsel to the Oversight Board, existing and functioning pursuant to California Health and Safety Code Section 34179 and other applicable law to oversee the affairs of the Successor Agency (OB oversees SA); and

WHEREAS, on February 26, 2013, the Chairman of the Oversight Board, under authority provided by the Agreement, executed that certain "Addition of Key Personnel Under the Agreement for Legal Services and Consent" ("Consent"), said Consent approving the addition of Edward Z. Kotkin ("Kotkin"), as "key personnel" of Cummins & White, LLP, and allowing Kotkin, in his capacity as an attorney associated with Cummins & White, LLP as "of counsel," to serve as legal counsel to the Oversight Board; and

WHEREAS, with adequate advance notice to and without objection by the Successor Agency and the Oversight Board, Cummins & White, LLP has elected to discontinue the provision of legal services under the Agreement; and

WHEREAS, the Successor Agency's staff and legal counsel have considered the prospect of securing competent legal services to replace those provided by Cummins & White, LLP, and requested that Kotkin do so pending consideration by the Successor Agency and Oversight Board of the Assignment approved by this Resolution ("assignment"), and recommended to the Successor Agency and the Oversight Board that this Assignment be approved, and that The Law Offices of Edward Z. Kotkin be appointed as legal counsel to the Oversight Board under terms and conditions nearly identical to those set forth in the Agreement with Cummins & White, LLP; and

WHEREAS, all actions of this Oversight Board reflected in this Resolution are in accord with California Health and Safety Code Section 34179, subdivision (n); and

WHEREAS, on December 18, 2013, in the course of taking action on a properly agendized item at a regularly scheduled meeting, the Oversight Board considered the approval, of the proposed Successor Agency approval of the Assignment, and upon (i) further consideration of all information and documentation presented by staff, (ii) all public comment and Oversight Board deliberation, if any, and (iii) the recommendation of the Successor Agency staff and legal counsel, did independently find and determine that this Resolution should be approved.

December 18, 2013

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency hereby approves the Successor Agency's proposed approval of an "Assignment and Assumption of Agreement for Legal Services" related to the "Agreement for Legal Services By and Between the Successor Agency to the Community Development Commission as the National City Redevelopment Agency and Cummins & White, LLP" ("Agreement"), said Agreement being dated June 19, 2012, and having been approved by Resolution 2012-10, and said assignment being attached to and incorporated by this reference in this Resolution as **Exhibit A**; and

BE IT FURTHER RESOLVED that pursuant to this Resolution, The Law Offices of Edward Z. Kotkin shall serve as legal counsel to the Oversight Board in accord with the terms and conditions of the Agreement and **Exhibit A** hereto; and

BE IT FURTHER RESOLVED that the Oversight Board makes this approval and based upon the true and correct recitals above, each of which it hereby incorporates into this Resolution by this reference; and

BE IT FURTHER RESOLVED that notice of this Resolution shall be transmitted to the California Department of Finance by electronic means, and shall take effect at the time provided in California Health and Safety Code Section 34179, subdivision (h); and

BE IT FURTHER RESOLVED that the Oversight Board Secretary and/or Successor Agency Secretary shall certify to the adoption of this Resolution.

The foregoing resolution was duly and regularly PASSED and ADOPTED at a regular meeting of the Oversight Board of the Successor Agency to the Community Development Commission as the National City Redevelopment Agency on this 18th day of December, 2013, by the following vote:

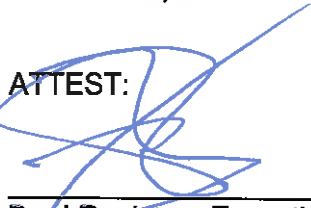
AYES: Fellows, Carson, Desrochers, Morrison, Perri, Hentschke

NOES: N/A

ABSENT: Donaldson

ABSTAIN: N/A

ATTEST:



Brad Raulston, Executive Director
Secretary to the Oversight Board



Ron Morrison, Chairman

APPROVED AS TO FORM:



Fred Whitaker, P.C.
Cummins & White, LLP
Oversight Board Counsel

ASSIGNMENT AND ASSUMPTION OF AGREEMENT FOR LEGAL SERVICES

This Assignment and Assumption of Agreement for Legal Services ("Assignment") is made and entered into this 20th day of November, 2013, between and among THE SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY, a California public body, corporate and politic organized under the laws of the State of California ("SA"), THE LAW OFFICES OF EDWARD Z. KOTKIN, a California professional law corporation (alternately the "New Firm" and the "Assignee"), and CUMMINS & WHITE, LLP, a California limited liability partnership (alternately the "Original Firm" and the "Assignor"). The SA, the New Firm and the Original Firm are sometimes individually referenced as a "Party," and sometimes collectively referenced below as the "Parties." This Assignment is made with reference to the following background facts and circumstances:

RECITALS

A. On June 19, 2012, the SA and the Original Firm entered into that certain "AGREEMENT FOR LEGAL SERVICES BY AND BETWEEN THE SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT COMMISSION AS THE NATIONAL CITY REDEVELOPMENT AGENCY AND CUMMINS & WHITE, LLP" ("Agreement"), said Agreement being duly executed by the SA's executive director, approved as to form by the SA's legal counsel, and now maintained as a public record by the secretary of the SA.

B. Under the Agreement, the Original Firm provided professional services as legal counsel to the "Oversight Board" created by statute to oversee the affairs of the SA ("NC Oversight Board").

C. On February 26, 2013, the Chair of the NC Oversight Board, the Honorable Ronald Morrison, executed that certain "Addition of Key Personnel Under the Agreement for Legal Services and Consent" ("Consent"), said Consent approving the addition of the New Firm's principal, Edward Z. Kotkin ("Kotkin"), as "key personnel" of the Original Firm under section 3.4 of the Agreement. The Consent allowed Kotkin, in his capacity as an attorney associated with the Original Firm as "of counsel," to serve as legal counsel to the NC Oversight Board.

D. As of the date of this Assignment's preparation, with adequate advance notice to and without objection by the SA and the NC Oversight Board, the Original Firm has elected to discontinue the provision of legal services under the Agreement ("Original Firm Election").

E. The SA's staff and legal counsel have considered the prospect of securing competent legal services to replace those provided by the Original Firm, requested that Kotkin do so pending consideration by the SA and NC Oversight Board of this Assignment, and

Assignment and Assumption of
Agreement for Legal Services

Page 1 of 4

2013 Legal Services Agreement

City of National City and
The Law Offices of Edward Z. Kotkin

recommended to the SA and the NC Oversight Board that this Assignment be approved, and that the New Firm appointed as legal counsel to the NC Oversight Board under terms and conditions identical to those set forth in the Agreement except as set forth herein.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ASSIGNMENT

1. **Assignment and Assumption.** In conformance with all terms and conditions of the Agreement, with the exception of new terms and conditions memorialized herein, Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's rights and obligations under the Agreement. Assignee hereby accepts such assignment, and hereby expressly and unconditionally assumes all of the duties and obligations of Assignor under the Agreement.
2. **Consent to Assignment of Obligations.** SA hereby consents to this Assignment and agrees to accept performance of Assignor's duties and obligations set forth in the Agreement by Assignee.
3. **All Provisions Contractual and Binding.** The Parties understand and agree that all terms and provisions of this Assignment, including the true and correct Recitals above, are contractual and binding upon the Parties.
4. **Counterparts.** This Assignment may be executed in one or more counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument.
5. **Effective Date.** This Assignment shall be effective and binding by and between the Parties retroactive to August 1, 2013, the date when Kotkin assumed the responsibility of serving as the NC Oversight Board's legal counsel after the Original Firm Election.
6. **Further Cooperation.** The Parties herein agree to execute any and all agreements, documents or instruments as may be reasonably necessary in order to fully effectuate the agreements and covenants of the Parties contained in this Assignment, or to evidence this Assignment as a matter of public record, if required to fulfill the purposes of this Assignment. The Parties further agree to mutually cooperate with one another in carrying out the purposes of this Assignment.

7. **New Terms and Conditions.** Terms and conditions of the Agreement shall be null and void, and shall be superseded by the terms and conditions of this Assignment in accord with the following table.

Section of Agreement	Term/Condition of the Agreement	Term of the Assignment
Article 3, Section 3.4	References to Michael Houston, James Wakefield and Bethelwel Wilson	Edward Z. Kotkin substituted for Michael Houston, Tamara McCrossen-Orr, "of counsel" attorney for New Firm, substituted for James Wakefield and Bethelwel Wilson
Article 3, Section 3.7	Reference to Michael Houston	Edward Z. Kotkin substituted for Michael Houston
Article 4, Section I	Every legal matter shall have a paralegal assigned.	Additional provision: The SA understands and agrees that the Firm (the New Firm) does not employ any certified paralegal, but will engage the services of a certified paralegal to work on any legal matter upon SA direction.
Article 11, Section C	Errors and omissions insurance in an amount not less than two million dollars (\$2,000,000.00) per claim	Errors and omissions insurance in an amount not less than one million dollars (\$1,000,000.00) per claim
Article 14	This Agreement shall be effective upon execution by the Firm and SA and continue through December 31, 2012.	This Agreement shall be effective upon execution by Cummins & White, LLP, the SA, and The Law Offices of Edward Z. Kotkin of that certain "ASSIGNMENT AND ASSUMPTION OF AGREEMENT FOR LEGAL SERVICES" and continue through the completion by the NC Oversight Board of its statutory function.
Article 16	Notice Provision	Notices to Cummins & White, LLP shall be addressed to the attention of Fred M. Whitaker; Notices to The Law Offices of Edward Z. Kotkin, addressed to The Law Offices of Edward Z. Kotkin 1851 East First Street, Suite 900 Santa Ana, CA 92705-4066 Attn: Edward Z. Kotkin
Exhibit "A"	General representation of the NC Oversight Board on matters relating to the NC Oversight Board's activity under ABx1 26.	General representation of the NC Oversight Board on matters relating to the NC Oversight Board's activity under ABx1 26 and AB 1484.

IN WITNESS WHEREOF, the undersigned have executed this Assignment and Assumption of Agreement for Legal Services as of the date and year first above written.

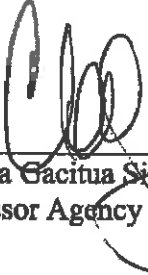
**SUCCESSOR AGENCY TO THE
COMMUNITY DEVELOPMENT
COMMISSION OF THE CITY OF
NATIONAL CITY**

By: 
Brad Raulston, Executive Director

**THE LAW OFFICES OF
EDWARD Z. KOTKIN (ASSIGNEE)**

By: 
Edward Z. Kotkin, Principal

APPROVED AS TO FORM:

By: 
Claudia Gacitua Silva,
Successor Agency Legal Counsel

CUMMINS & WHITE, LLP (ASSIGNOR)

By: _____
Fred M. Whitaker, Managing Partner

IN WITNESS WHEREOF, the undersigned have executed this Assignment and Assumption of Agreement for Legal Services as of the date and year first above written.

**SUCCESSOR AGENCY TO THE
COMMUNITY DEVELOPMENT
COMMISSION OF THE CITY OF
NATIONAL CITY**

**THE LAW OFFICES OF
EDWARD Z. KOTKIN (ASSIGNEE)**

By: _____
Brad Raulston, Executive Director

By: _____
Edward Z. Kotkin, Principal

APPROVED AS TO FORM:

CUMMINS & WHITE, LLP (ASSIGNOR)

By: _____
Claudia Gacitua Silva,
Successor Agency Legal Counsel

By: Fred M. Whitaker, P.C.
Fred M. Whitaker, Managing Partner

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

The Law Offices of Edward Z. Kotkin, A Professional Law Corporation

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:

☐ Individual/sole proprietor ☐ C Corporation ☒ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶

☐ Other (see instructions) ▶

Exemptions (see instructions):

Exempt payee code (if any) _____

Exemption from FATCA reporting
code (if any) _____

Address (number, street, and apt. or suite no.)

1851 East First Street, Suite 900

City, state, and ZIP code

Santa Ana, CA 92705

Requester's name and address (optional)

**City of National City
1243 National City Boulevard
National City, CA 91950**

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

			-			-			
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Employer identification number

4	5	-	2	8	5	0	0	4	9
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Part II Certification

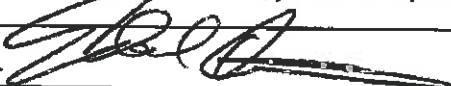
Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign
Here

Signature of
U.S. person ▶



Date ▶

10/22/13

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. The IRS has created a page on www.irs.gov/w9 for information about Form W-9, at www.irs.gov/w9. Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

Note. If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.